

IN THE HIGHCOURT OF JUDICATURE AT MADRAS

Reserved on : 11.10.2018

Pronounced on : 21.03.2019

CORAM:

THE HONOURABLE MR.JUSTICE P. RAJAMANICKAM

S.A.No.1957 of 2001

N. Puttammal ..Appellant/plaintiff

versus

1.Bayammal
2.Premasagar
3.Rani
4.Seetha
5.Yeshodha
6.Radhakrishnan
7.Ravikumar
8.Sivasubramani
9.Haliammal
10.Kanthakumari
11.Muralidharan
12.Latha
13.Gokulakrishnan

..Respondents/defendants

Prayer : Second Appeal is filed under Section 100 of C.P.C., against the judgment and decree of the District Court of Nilgiris, passed in A.S.No.20 of 1986; dated 14.08.2001, reversing the judgment and decree of the District Munsif's Court, Ootacamund, passed in O.S.No.245 of 1984 dated 10.03.1986.

For Appellant :M/s.Srinath Sridevan
For Respondents : M/s.S.K.Rakhunathan

JUDGMENT

This second appeal has been filed by the plaintiff against the judgment and decree passed by the District Judge, Nilgiris, at Ootacamund in A.S.No.20 of 1986 dated 14.08.2001 reversing the judgment and decree passed by the District Munsif, at Ootacamund in O.S.No.245 of 1984 dated 10.03.1986.

2. The appellant herein had filed a suit in O.S.No.245 of 1984 on the file of the District Munsif, Ootacamund for the relief of specific performance of the sale agreement dated 01.07.1981. The learned District Munsif, Ootacamund, by the judgment dated 10.03.1986 had decreed the said suit as prayed for with costs. Further,

he directed the defendants therein to execute the sale deed within a month. Aggrieved by the same, the defendants had filed an appeal in A.S.No.20 of 1986 on the file of the District Judge, Nilgiris, at Ootacamund. The learned District Judge of Nilgiris at Ootacamund by the judgment dated 24.09.1986 had allowed the said appeal and dismissed the suit. As against the same, the plaintiff had filed a second appeal in S.A.No.2036 of 1986 before this court. This court by the judgment dated 23.02.1999 allowed the said second appeal and set aside the judgment and decree passed by the first appellate court in A.S.No.20 of 1986 and remanded the matter for reconsideration of the entire issues on merits. Accordingly, the District Judge of the Nilgiris at Ootacamund had restored the said appeal on his file and after hearing both sides, by the judgment and decree dated 14.08.2001 had allowed the said appeal with costs and set aside the judgment and decree passed by the trial court and dismissed the suit in O.S.No.245 of 1984 with costs. However, he directed the defendants to return the advance amount of Rs.3000/- with 24% interest per annum from 01.07.1981 till the date of realisation and created a charge over the suit property. Further, he ordered that the plaintiff is entitled to withdraw the amount deposited by her before the trial court. Feeling aggrieved, the plaintiff had filed the present second appeal.

3. For the sake of convenience, the parties are referred to as described before the trial court.

4. The averments made in the plaint are, in brief, as follows:-

An extent of 1.02 acre of land in R.S.No.1555 of Ootacamund Town originally belonged to one Atta Matha Gowder. After his death, the same devolved on the defendants and their brother, M.Lingam. The plaintiff has been in possession and enjoyment of the suit property as a lessee under the defendants for the past several years. In the year 1981, the defendants offered to sell the suit property for a consideration of Rs.11,400/- and the plaintiff had agreed the same. The agreement was reduced to writing on 01.07.1981. The plaintiff had paid a sum of Rs.3000/- as advance to the defendants and it was agreed that the balance sale consideration of Rs.8400/- to be paid on or before 31.12.1982 and the defendants have to execute the sale deed after receiving the said amount. Inter alia under Clause-5 of the said agreement, the defendants agreed to sub-divide the extent of 1.02 acres from and out of the total extent of 8.26-2/16 acres and it was further agreed that after such a sub-division, the plaintiff would sub-divide her extent viz., the suit property. But the defendants have not carried out the necessary sub-divisions as a result of

which sale could not be gone through. At any rate, the plaintiff was always ready and willing to pay the balance amount and get the sale deed in her favour. As the defendants did not execute the sale deed as agreed, the plaintiff paid the rent for the years 1982-1983 and for later period, as contemplated under the agreement. As the defendants did not perform their part of contract, the plaintiff issued a lawyer's notice dated 09.02.1984 calling upon the defendants to receive the balance sale consideration and execute the sale deed. The defendants, after receipt of the said notice, did not come forward to perform their part of contract. On the contrary, they sent a reply notice dated 19.02.1984 with false averments. The plaintiff is always ready and willing to perform her part of contract and hence she filed the suit for the relief of specific performance.

5. The averments made in the written statement filed by the defendants 1 and 2 are, in brief, as follows:

The defendants admitted the allegation regarding the agreement dated 01.07.1981. A sum of Rs.3000/- was received by the defendants to help one of their friends. The parties had interalia agreed to complete the sale on or before 31.12.1982. The time stipulated for completion of sale is the essence of contract. The plaintiff has failed to tender the balance sale consideration within the time stipulated and has conveniently chosen to sue for specific performance with ulterior motive. The plaintiff has committed breach of the agreement. The prices of properties have soared sky high and the plaintiff after realising the same has ingeniously chosen to take advantage of the agreement which is no longer in force. The defendants made arrangements for sub-division, but had to drop the same as the plaintiff did not express her readiness to pay the balance sale consideration and get the sale deed executed inspite of the defendants being ready to honour their part of the obligations. It is false to state that the plaintiff was always ready and willing to pay the balance sale consideration and get the sale deed in her favour. The conduct of the plaintiff, particularly the laches and inaction of the plaintiff for more than a year after the expiry of the period stipulated in the agreement and also the fact that the plaintiff has paid the rents for the lands for the year 1984 will bear testimony to the fact that the parties never intended to keep the agreement in force and that the same had no legal force after 31.12.1982. Therefore, the defendants prayed to dismiss the suit.

6. Based on the aforesaid pleadings, the learned District Munsif of Ootacamund, had framed necessary issues and tried the suit. During trial, on the side of the plaintiff, the plaintiff examined herself

as PW1, and she had marked Exs.A1 to A3 as exhibits. On the side of the defendants, the second defendant was examined as DW1. The defendants have not marked any exhibits on their side.

7.The learned District Munsif of Ootacamund, after taking into consideration of the materials placed before him, found that since the defendants have not subdivided the property as per the agreement, no laches attributed to the plaintiff. He further found that the plaintiff was always ready and willing to perform her part of contract, but the defendants have not performed her part of contract. Accordingly, he decreed the suit for the relief of specific performance. Aggrieved by the same, the defendants had filed an appeal in A.S.No.20 of 1986 on the file of the District Judge of Nilgiris at Ootacamund. The learned District Judge, by the Judgment dated 24.09.1986 had allowed the said appeal and set aside the judgment and decree passed by the trial court and dismissed the suit. Aggrieved by the same, the plaintiff had filed a second appeal in S.A.No.2036 of 1996 before this court. This court by the judgment dated 23.02.1999 had allowed the said second appeal and set aside the judgment and decree passed by the first appellate court and remanded the matter to the first appellate court for reconsideration of the entire issues. Accordingly, the learned District Judge, Nilgiris at Ootacamund, had restored the said appeal on his file and after hearing both sides by the judgment dated 14.08.2001, had allowed the said appeal and set aside the judgment and decree passed by the trial court and dismissed the suit in O.S.No.245 of 1984. However, he directed the defendants to return the advance amount of Rs.3000/- to the plaintiff with 24% interest per annum from 01.07.1981 till the date of realisation and also created a charge over the suit property. Further in the judgment, he observed that it is made clear that the plaintiff is entitled to withdraw the amount deposited by her before the trial court. Feeling aggrieved, the plaintiff has filed the present second appeal.

8. This court at the time of admitting the second appeal had formulated the following substantial questions of law:

1. Whether the findings regarding laches in the remand order made in S.A.No.2036 of 1986, are not binding upon the District Court after remand?

2. Whether mere delay, without proof of waiver, abandonment, or inequity, is sufficient to refuse the relief of specific performance?

3. Whether the burden of proof in a specific performance suit, is not upon the party who alleges waiver, abandonment, or inequitability, in a case of mere delay, where all other aspects, such as execution of agreement, price, property, etc., are all admitted.?

9. Heard Mr.Srinath Sridevan, learned counsel for the appellant and Mr.S.K.Rakhunathan, learned counsel for the respondents.

10. Substantial Questions of law 1 to 3 :

The learned counsel for the appellant/plaintiff has submitted that the first appellate court erred in dismissing the appellant's suit for specific performance on the sole ground of laches. He further submitted that the First Appellate Court ought to have seen that no duty was cast upon the appellant under the agreement until 31.12.1982 and even thereafter, it was the appellant's option as to whether she wanted to continue the agreement or discontinue it and in the instant case, the appellant decided to go ahead with the agreement and hence, there is no laches whatsoever. He further submitted that the first appellate court erred in not following the judgment passed by this court in S.A.No.2036 of 1986. He further submitted that this court in its remand order dated 23.02.1999 has clearly held that the appellate Judge has calculated the period from 31.12.1981 fixed for the defendants to complete the sub-division and not from 31.12.1982 which was the last date stipulated for the payment of the balance of the sale consideration and the said approach is obviously erroneous and cannot be sustained. He further submitted that this court in the said remand order has held that even according to the defendants, the delay on the part of the defendants had arisen only from 31.12.1982 and not from 31.12.1981 and that being so, the first appellate court ought not to have held that there was a delay on the part of the appellant. He further submitted that the first appellate court erred in holding that the time was considered as essence of the contract. He further submitted that in agreement for sale of immovable property, in the absence of express intent, the presumption is that time is not the essence of the contract. He further submitted that mere delay will not disentitle specific performance and that there must be proof of waiver or abandonment or it must be inequitable to decree specific performance. He further submitted that there is no pleading or proof in the instant case to substantiate any case of waiver or abandonment or inequitability. He further submitted that the first appellate court erred in law in not casting the burden of proof upon the respondents to show how the appellant was disentitled to specific performance and

therefore, he prayed to allow the second appeal and set aside the judgment and decree passed by the first appellate court and restore the judgment and decree passed by the trial court.

11. The learned counsel for the appellant in support of his contentions, relied upon the following decisions :

1. Nathulal Vs. Phoolchand 1969 (3) SCC 120
2. Saradamani Kandappan and Others Vs. S.Rajalakshmi and Others (2011) 12 SCC 18

12. Per contra, the learned counsel for the respondents has submitted that in Ex.A1 sale agreement, it is clearly stated that the vendors are in acute need of money for their family expenses and hence, they intended to sell the extent of 68 cents for a total consideration of Rs.11400/- He further submitted that on the date of sale agreement, the plaintiff has paid a sum of Rs.3000/- as advance and it was specifically agreed that she shall pay the balance sale consideration of Rs.8400/- on or before 31.12.1982 and get the sale deed executed in her favour or nominee. He further submitted that the clause in Ex.A1 that the vendors have to get sub-division of 1.02 acres at their costs within 31.12.1981 will not stand in the way of making payment within the stipulated period. He further submitted that there is no clause in Ex.A1 sale agreement that until the defendants sub-divided the area of 1.02 acre, the plaintiff need not pay the balance sale consideration. He further submitted that in Ex.A1, it is clearly stated that if the vendors failed to get the property sub-divided before the stipulated period, the purchaser is at liberty to cancel the agreement and get back the advance amount paid, but no option was given to the purchaser to retain the balance sale consideration till the defendants get the properties sub-divided. He further submitted that in clause-4 of Ex.A1 sale agreement, it is clearly stated that if the purchaser does not complete the sale deed before the end of the year 1981, she shall pay the lease amount for the year 1982 and in pursuance of the said clause, the plaintiff has paid the lease amount for the year 1982 and in the later years and that itself would show that the parties never intended to keep the said agreement in force after 31.12.1982. He further submitted that only on 09.02.1984, the plaintiff had issued a lawyer's notice expressing her readiness and willingness and it would show that she was not ready and willing to perform her part of contract within the time stipulated in Ex.A1 sale agreement. He further submitted that since the value of the property has been increased many folds, as an after thought, the plaintiff has filed a suit after expiry of more than one year from the last date mentioned in Ex.A1 sale agreement. He further submitted that the trial court, without considering the aforesaid facts, has

decreed the suit, but the first appellate court has appreciated the evidence in a proper perspective and had allowed the appeal and set aside the judgment and decree passed by the trial court and in the said factual findings, this court cannot interfere. In support of the said contentions, he relied upon the decision in A.K.Lakshmipathy (Dead) and Others Vs. Rai Saheb Pannalal H. Lahoti Charitable Trust and Others (2010) 1 SCC 287

13. The records would show that the plaintiff has succeeded before the trial court but in the appeal, the decree which was granted in her favour, was set aside. As against the same, she filed the S.A.No.2036 of 1986 before this court. This court by the judgment and decree dated 23.02.1999 had allowed the said second appeal and remanded the matter to the first appellate court for reconsideration of the entire issue on merits. At the time of remanding the matter, this court has observed in paragraph No.12 as follows:

"12.In paragraph 14 while considering whether the plaintiff can be held guilty of laches the appellate court would state that the plaintiff had kept quite for more than three years. The learned appellate Judge has calculated the period from 31.12.1981 fixed for the defendants to complete the sub division and not from 31.12.1982 which was the last date stipulated for the payment of the balance of sale consideration. This approach is obviously erroneous and it cannot be sustained. In fact as stated earlier even according to the defendants, the delay in the part of the plaintiff had arisen only from 31.12.1982 and not from 31.12.1981.

By referring to the aforesaid observations, the learned counsel for the appellant has submitted that this court has held that there are no laches on the part of the plaintiff and the said finding will bind upon the first appellate court. In the aforesaid observation, this court has not expressed any view as to whether there was any laches on the part of the plaintiff or not. It has just pointed out the mistake committed by the first appellate court with regard to the period calculated while considering the question as to whether the plaintiff can be held guilty of laches.

14. It is also to be pointed out that this court after observing as extracted above, in the same paragraph, it further observed as follows:-

of the mutual contentions as any such observation would prejudice the cause of the parties before the appellate court, suffice to say that the discussion by the lower appellate court in the merits of the plaintiff's entitlement to a decree for specific performance is totally unsatisfactory. Though the issue is a mixed question of fact and law applicable to specific performance in the context of factual findings, it is appropriate that the appellate court should reconsider the merits of mutual submissions in a proper manner. "

15. From the aforesaid observations, it is clear that this court does not want to say anything on the merits of the mutual contentions. On the contrary, it has held that any such observation would prejudice a cause of the parties before the appellate court. It is for the appellate court to reconsider the merits of mutual submissions in a proper manner. Further, in the concluding paragraph, this court has held that the second appeal is remanded to the file of the lower appellate court for reconsideration of the entire issues on merits. Therefore, a liberty was given to the first appellate court to reconsider the entire issues on merits.

16. According to the plaintiff, in clause-5 of the Ex.A1 sale agreement, it is specifically stated that the vendors have to sub-divide the area of 1.02 acre at their costs within 31.12.1981, but they have not taken any steps to sub-divide the aforesaid area within the stipulated period and that was the reason for the delay in filing the suit for specific performance. But, the case of the defendants is that as per the clause-6 of the said agreement, if the vendors fail to get the property sub-divided before the stipulated period, the purchaser is at liberty to cancel the agreement and get back the advance amount, but the plaintiff has not invoked the said clause and on the contrary, after waiting for more than two years, knowing fully well that the value of the property has been increased many folds, issued a notice on 09.02.1984. It is their further case that as per Clause-3, plaintiff has to pay the balance sale consideration of Rs.8400/- on or before 31.12.1982 and get the sale deed executed in her favour or her nominee, and hence time was considered as the essence of the contract, but the plaintiff has not made any attempt to pay the balance sale consideration before the stipulated date i.e., 31.12.1982. For proper appreciation, the clauses - 3 to 7 of the Ex.A1 sale agreement are extracted hereunder:

"3. the purchaser shall pay the balance
Sale consideration of Rs.8,400-00 (Rupees

Eight Thousand and Four Hundred only) on or before 31.12.1982 and get the sale deed executed in her favour or her nominee.

4. The purchaser is already in possession of the schedule mentioned property as a Lessee. She has paid the land rent till end of the year 1981. If the purchaser does not complete the sale deed before the end of the year 1981, she shall pay the lease amount for the year 1982.

5. The Vendors shall sub-divide the area of 1.02 acre at their costs within 31.12.1981 out of which the purchaser shall get her share sub divided.

6. If the vendors fail to get the property sub divided before the stipulated period, the purchaser is at a liberty to cancel this agreement and get back the advance amount paid.

7. The parties are entitled for the specific performance of this agreement."

17. A plain reading of the clause-6 would show that the vendors shall sub-divide the area of 1.02 acre within 31.12.1981 and if they fail to get the property sub-divided before the said period, a liberty has been given to the purchaser/plaintiff to cancel the agreement and get back the advance amount. But the plaintiff has not chosen to invoke clause-6 of the sale agreement. On the contrary, she has issued a lawyer's notice on 09.02.1984 (Ex.A2) calling upon the defendants to receive the balance sale consideration and execute the sale deed. If really, failure of the defendants for not getting sub-division of the aforesaid area was the reason for not paying the balance sale consideration and for getting the sale deed, she would have called upon the defendants to get the aforesaid area sub-divided or otherwise, she will cancel the sale agreement. But instead of asking so, she called upon the defendants through the said notice, to receive the balance sale consideration of Rs.8400/- within a week from the date of receipt of notice and execute the sale deed.

18. The conduct of the plaintiff would show that even if the aforesaid extent is not sub-divided, she is prepared to get the sale deed and in such a case, she should have called the defendants to receive the balance sale consideration and execute the sale deed within the time stipulated in Ex.A1 sale agreement. In the said sale agreement, in Clause-3, it is specifically stated that

the purchaser shall pay the balance sale consideration of Rs.8400/- on or before 31.12.1982 and get the sale deed executed in her favour or her nominee. In Ex.A1, it is not at all stated that unless the vendors sub-divided the area of 1.02. acres, the sale cannot be completed.

19. Admittedly, the plaintiff is in possession of the suit property admeasuring 68 cents as lessee and that being so, there will not be any difficulty for identifying and enjoying the property. So, even if the vendors/defendants did not come forward to sub-divide the property there would not be any hindrance for getting the sale deed. Even after getting the sale deed, the plaintiff can get the sub-division of the property.

20. In Nathulal Vs. Phoolchand (cited supra), the Hon'ble Supreme Court in paragraph No.9 has observed as follows:

"9. The conditions necessary for making out the defence of part performance to an action in ejectment by the owner are:-

(1) that the transferor has contracted to transfer for consideration any immovable property by writing signed by him or on his behalf from which the terms necessary to constitute the transfer can be ascertained with reasonable certainty;

(2) that the transferee has, in part performance of the contract, taken possession of the property or any part thereof, or the transferee, being already in possession continues in possession in part performance of the contract; (3) that the transferee has done some act in furtherance of the contract; and (4) that the transferee has performed or is willing to perform his part of the contract. If these conditions are fulfilled then notwithstanding that the contract, though required to be registered, has not been registered, or, where there is an instrument of transfer, that the transfer has not been completed in the manner prescribed therefore by the law for the time being in force, the transferor or any person claiming under him is debarred from enforcing against the transferee any right in respect of the property of which the transferee has taken or continued in possession, other than a right expressly provided by the terms of the contract. There is in this case a contract to transfer for consideration immovable property by writing signed by Nathulal from which the terms necessary to, constitute 'the transfer can be ascertained with reasonable.

certainty. In part performance of the contract, Phoolchand has taken possession of the property and he had in pursuance thereof paid an amount of Rs. 22,011/-. The argument raised by counsel for Nathulal that the act done in pursuance of the contract must be independent of the terms of the contract cannot be accepted. The first three conditions for the defence of part performance to be effectively set up by Phoolchand exist. Mr. Shroff for Nathulal however contends that Phoolchand was not willing to perform his part of the contract.

"

21. In this case, admittedly the plaintiff is in possession of the suit property as a lessee, even before Ex.A1 sale agreement. The defendants have not filed any suit seeking possession of the property. If the defendants have filed any suit for recovery of possession, then the plaintiff may take advantage of part performance. But the defendants have not taken any such steps. Hence, the aforesaid decision will not apply to the facts of this case.

22. In *Saradamani Kandappan and Others Vs. S. Rajalakshmi and Others* (cited supra), the Hon'ble Supreme Court while dealing with the principle as to whether time is not the essence of the contract relating to the immovable properties has observed in paragraph Nos.23, 24, 27 & 28 as follows:

"23. It is of some interest to note that the distinction between contracts relating to immovable properties and other contracts was not drawn by Section 55 of Contract Act (or any other provisions of Contract Act or Specific Relief Act, 1963). Courts in India made the said distinction, by following the English law evolved during the nineteenth century. This Court held that time is not of the essence of the contracts relating to immovable properties; and that notwithstanding default in carrying out the contract within the specified period, specific performance will ordinarily be granted, if having regard to the express stipulation of the parties, nature of the property and surrounding circumstances, it is not inequitable to grant such relief. [vide *Gomathinayagam Pillai* (supra), *Govind Prasad Chaturvedi* (supra) and *Indira Kaur v. Sheo Lal Kapoor* 1988 (2) SCC 188 and *Chand Rani* (supra) following the decision of Privy Council in *Jamshed Khodaram Irani v. Burjorji*

Dhunjibhai AIR 1915 PC 83 and other cases]. Of course, the Constitution Bench in Chand Rani made a slight departure from the said view.

24. The principle that time is not of the essence of contracts relating to immovable properties took shape in an era when market value of immovable properties were stable and did not undergo any marked change even over a few years (followed mechanically, even when value ceased to be stable). As a consequence, time for performance, stipulated in the agreement was assumed to be not material, or at all events considered as merely indicating the reasonable period within which contract should be performed. The assumption was that grant of specific performance would not prejudice the vendor-Defendant financially as there would not be much difference in the market value of the property even if the contract was performed after a few months. This principle made sense during the first half of the twentieth century, when there was comparatively very little inflation, in India. The third quarter of the twentieth century saw a very slow but steady increase in prices. But a drastic change occurred from the beginning of the last quarter of the twentieth century. There has been a galloping inflation and prices of immovable properties have increased steeply, by leaps and bounds. Market values of properties are no longer stable or steady. We can take judicial notice of the comparative purchase power of a rupee in the year 1975 and now, as also the steep increase in the value of the immovable properties between then and now. It is no exaggeration to say that properties in cities, worth a lakh or so in or about 1975 to 1980, may cost a crore or more now.

27. A correct perspective relating to the question whether time is not of the essence of the contract in contracts relating to immovable property, is given by this Court in K.S. Vidyanadam and Ors. v. Vairavan MANU/SC/0404/1997 : (1997) 3 SCC 1 (by Jeevan Reddy J. who incidentally was a member of the Constitution Bench in Chand Rani). This Court observed:

It has been consistently held by the courts in India, following certain early English decisions, that in the case of agreement of sale relating to immovable property, time is not of the essence of the contract unless specifically provided to that effect.

In the case of urban properties in India, it is well-known that their prices have been going up sharply over the last few decades particularly after 1973.

We cannot be oblivious to the reality and the reality is constant and continuous rise in the values of urban properties - fuelled by large scale migration of people from rural areas to urban centres and by inflation.

Indeed, we are inclined to think that the rigor of the rule evolved by courts that time is not of the essence of the contract in the case of immovable properties - evolved in times when prices and values were stable and inflation was unknown - requires to be relaxed, if not modified, particularly in the case of urban immovable properties. It is high time, we do so.

(Emphasis supplied)

Therefore there is an urgent need to revisit the principle that time is not of the essence in contracts relating to immovable properties and also explain the current position of law with regard to contracts relating to immovable property made after 1975, in view of the changed circumstances arising from inflation and steep increase in prices. We do not propose to undertake that exercise in this case, nor referring the matter to larger bench as we have held on facts in this case that time is the essence of the contract, even with reference to the principles in Chand Rani and other cases. Be that as it may.

28. Till the issue is considered in an appropriate case, we can only reiterate what has been suggested in K.S. Vidyanadam (supra):

(i) Courts, while exercising discretion in

in mind that when the parties prescribe a time/period, for taking certain steps or for completion of the transaction, that must have some significance and therefore time/period prescribed cannot be ignored.

(ii) Courts will apply greater scrutiny and strictness when considering whether the purchaser was 'ready and willing' to perform his part of the contract.

(iii) Every suit for specific performance need not be decreed merely because it is filed within the period of limitation by ignoring the time-limits stipulated in the agreement. Courts will also 'frown' upon suits which are not filed immediately after the breach/refusal. The fact that limitation is three years does not mean a purchaser can wait for 1 or 2 years to file a suit and obtain specific performance. The three year period is intended to assist purchasers in special cases, as for example, where the major part of the consideration has been paid to the vendor and possession has been delivered in part performance, where equity shifts in favour of the purchaser."

23. From the aforesaid decision, it is clear that there is an urgent need to revisit the principle that time is not of the essence in contracts relating to immovable properties and also explain the correct position of law with regard to contracts relating to immovable property made after 1975, in view of the changed circumstances assigning from inflation and steep increase in prices. It is also clear that the courts while exercising discretion in suit for specific performance should bear in mind that when parties prescribe a time/period, for taking steps or for completion of the transaction, that must have some significance and therefore, time/period prescribed cannot be ignored. It is also clear that every suit for specific performance need not be decreed merely because it is filed within the period of limitation by ignoring the time-limits stipulated in the agreement.

24. In A.K.Lakshmipathy (Dead) and others Vs. Rai Saheb Pannalal H. Lahoti Charitable Trust and Others (cited supra), the Hon'ble Supreme Court in paragraph No.18 has observed as follows:-

"..... It is well settled that in a suit for specific performance of a contract for sale, it has to be proved that the plaintiff who is seeking for a decree for

specific performance of the contract for sale must always be ready and willing to complete the terms of the agreement for sale and that he has not abandoned the contract and his intention is to keep the contract subsisting till it is executed."

25. In this case, in Ex.A1, it is clearly stated that the vendors are in acute need of money for their family expenses and they intend to sell the extent of 68 cents of land for a total consideration of Rs.11400/- and the purchaser had agreed to purchase the property for the said consideration and on the date of agreement a sum of Rs.3000/- was paid as advance and it was agreed that the purchaser shall pay the balance sale consideration of Rs.8400/- on or before 31.12.1982 and get the sale deed executed in her favour or her nominee. From the aforesaid recitals, it is clear that the defendants have decided to sell the suit property because they are in acute need of money for their family expenses. Under the said circumstances, the plaintiff should have paid the balance sale consideration of Rs.8400/- within the stipulated period i.e., on or before 31.12.1982, but the plaintiff has not come forward to pay the balance sale consideration of Rs.8400/- on or before 31.12.1982. The only reason stated by the plaintiff for not paying the aforesaid amount and get the sale deed executed within the stipulated period is that as per Clause-5 of the agreement, the defendants should have sub-divided 1.02 acres on or before 31.12.1981. If that was the reason, by exercising the liberty given under Clause-6 of the agreement, she would have cancelled the agreement, but she has not chosen to cancel the agreement and that shows that she was not very particular about the sub-division of the area of 1.02 acres. In such a case, she should have called upon the defendants to receive the balance sale consideration and execute the sale deed within the stipulated period i.e., on or before 31.12.1982. But till the issuance of Ex.A2 notice dated 09.02.1984, she has not taken any steps either calling upon the defendants to get the sub-division of the property or to receive the balance sale consideration and execute the sale deed. So the conduct of the plaintiff would clearly show that she was not ready and willing to perform the contract within the stipulated period.

26. The defendants have stated in their written statement that the prices of properties have soared sky high and the plaintiff after realising the same has ingeniously chosen to take advantage of the agreement which is no longer in force. During cross examination of PW1, it was suggested that the suit property would fetch for Rs.10 lakhs, but she has not denied the same. On the contrary, she has stated that she does not know whether

the suit property would fetch for Rs.10 lakhs. Further, DW1 has deposed in his cross examination that the suit property would fetch for Rs.7 lakhs. The said fact has not been denied by the plaintiff. So it is clear that the value of the suit property has been increased many folds. The said fact also would show that after knowing that the value of the property has been increased many folds, belatedly plaintiff has issued notice and also filed a suit for specific performance. The first appellate court after taking into consideration of all the aforesaid facts, has rightly allowed the appeal and set aside the judgment and decree passed by the trial court. In the said factual findings, this court cannot interfere. Accordingly, the substantial questions of law are answered against the appellant/plaintiff.

27. In the result, the second appeal is dismissed. No costs.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

gv

To

1. The District Court,
Nilgiris.

2. The District Munsif's Court,
Ootacamund.

3. The Section Officer,
V.R. Section,
Madras High Court,
Chennai.

+1cc to M/s.S.K.Rakhunathan , Advocate SR.No. 27404

+1cc to M/s.Srinath Sridevan , Advocate SR.No. 28173

S.A.No.1957 of 2001

A.SK(18/11/2019)